

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DENNIS EAST INTERNATIONAL, INC.,)
)
Plaintiff,)
)
vs.) Civil Action No. 04-11994-RWZ
)
ATHOME AMERICA, INC.,)
)
Defendant.)

DEFENDANT'S MOTION TO DISMISS

NOW COMES the Defendant, AtHome America, Inc., and, pursuant to Fed. R. Civ. P. 12(b)(6), hereby moves this Court to enter an order dismissing certain claims under Count I, and all of Counts II and III of the Plaintiff's Complaint against it in the above-captioned matter. The Plaintiff's Complaint establishes as a matter of law that the Plaintiff cannot maintain United States Copyright actions for certain works not registered with the United States Patent and Trademark Office, and the plaintiff has no legal claims under either the Lanham Act or under M.G.L.c. 93A as described in the Complaint.

More specifically, the Plaintiff's Complaint fails to properly plead all elements necessary for making a claim of trade dress infringement under the Lanham Act. The Plaintiff's Complaint further fails to set forth facts sufficient to support a separate claim under the Massachusetts Unfair Business Practices Act, M.G.L.c. 93A (hereinafter referred to as "Chapter 93A"). The alleged acts that are the basis for a claim under Chapter 93A are the same as those described as constituting copyright infringement under the United States Copyright Act. As federal copyright law pre-empts state law in this area, the Plaintiff's Chapter 93A claim must fail. The grounds in

support of this Motion, along with other grounds, are more particularly set forth in the accompanying Memorandum submitted herewith.

REQUEST FOR ORAL ARGUMENT

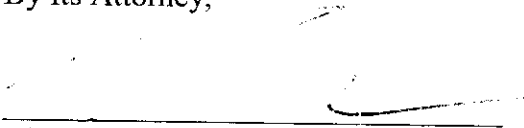
Pursuant to Local Rule 7.1(D), Defendant, AtHome America, Inc. respectfully requests oral argument on its Motion.

WHEREFORE, for the reasons set forth in the accompanying Memorandum, the Defendant, AtHome America, Inc., respectfully requests that this Court grant its Motion to Dismiss.

Dated: December 23, 2004

Respectfully submitted,

The Defendant,
ATHOME AMERICA, INC.,
By Its Attorney,



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